

FILED

2013 AUG 30 PM 4:17

U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

BY:

1 MICHAEL R. SIMMONDS (SBN 96238)
msimmonds@snllp.com
2 CHRISTOPHER M. SPAIN (SBN 265465)
cspain@snllp.com
3 SIMMONDS & NARITA LLP
44 Montgomery Street, Suite 3010
4 San Francisco, CA 94104-4816
Telephone: (415) 283-1000
5 Facsimile: (415) 352-2625

6 Attorneys for Defendant
Cavalry Portfolio Services, LLC
7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION

11 SACV 13-01357-DOC/VBK,
CASE NO.:

12 RUBEN T. VARELA,

13
14 Plaintiff,

15 vs.

16
17 CAVALRY PORTFOLIO
SERVICES, a Delaware Limited
18 Liability Corporation

19 Defendant.
20
21
22
23
24
25
26
27
28

NOTICE OF REMOVAL

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that defendant Cavalry Portfolio Services, LLC
3 (“Defendant”), a Delaware limited liability company, hereby removes to this Court
4 the state court action described below.

5 1. On August 1, 2013, a complaint was filed by plaintiff Ruben T. Varela
6 (“Plaintiff”), in an action pending in the Superior Court of the State of California in
7 and for the County of Orange, entitled *Ruben T. Varela v. Cavalry Portfolio*
8 *Services, LLC*, Case No. 30-2013-00665964. A copy of the state court Summons
9 and Complaint (“Complaint”) that was served on Defendant is attached hereto as
10 **Exhibit A.**

11 2. This removal petition is timely under 28 U.S.C. § 1446(b) because
12 Defendant was first served a copy of the Complaint on August 2, 2013.

13 **JURISDICTION**

14 3. This action is a civil action of which this Court has original
15 jurisdiction under 28 U.S.C. § 1331 and that may be removed to this Court by the
16 Defendant pursuant to the provisions of 28 U.S.C. § 1441(a), because the
17 Complaint asserts federal claims against Defendant arising under, *inter alia*, the
18 Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* and the Fair Credit
19 Reporting Act, 15 U.S.C. § 1681, *et seq.* See Exhibit A.

20 4. The Complaint was filed in the Superior Court of California, County
21 of Orange. See Exhibit A. Venue in this District Court is proper. See 28 U.S.C. §
22 1441(a) (providing for removal “to the district court of the United States for the
23 district and division embracing the place” where the state court action is pending);
24 28 U.S.C. § 84(c) (Central District comprises the counties of Los Angeles, Ventura,
25 Santa Barbara, San Luis Obispo, Orange, Riverside, and San Bernardino).

26 5. Defendant is represented by the undersigned.

27 //

28 //

1 DATED: August 30, 2013

SIMMONDS & NARITA LLP
MICHAEL R. SIMMONDS
CHRISTOPHER M. SPAIN

2
3
4 By: _____

5 Christopher M. Spain
6 Attorneys for Defendant
7 Cavalry Portfolio Services, LLC
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

Aug. 02, 2013 12:25 PM

SUM-100

**SUMMONS
(CITACION JUDICIAL)**FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**FILED**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**AUG 01 2013**

ALAN CARLSON Clerk of the Court

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Cavalry Portfolio Services, LLC, a Delaware limited liability corporation

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Ruben T. Varela

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Superior Court of California, Orange Co.

700 Civic Center Drive West

Santa Ana, CA 92702

CASE NUMBER:
(Número del Caso):**30-2013****00665964****JUDGE KIRK H. NAKAMURA**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Ruben T. Varela, Pro Se; 2249 Camino Del Sol, Fullerton, California, 92833; 714-864-0150

DATE: August 01, 2013
(Fecha)**ALAN CARLSON**Clerk, by
(Secretario)**YOLANDA MEJIA**Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): Cavalry Portfolio Services, LLC

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

- ☒ by personal delivery on (date):

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Ruben T. Varela 2249 Camino Del Sol Fullerton, California 92833 TELEPHONE NO.: 714-864-0150 FAX NO.: ATTORNEY FOR (Name): Plaintiff in Propria Persona		FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CENTRAL JUSTICE CENTER AUG 01 2013 ALAN CARLSON Clerk of the Court 30-2013	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 700 Civic Center West MAILING ADDRESS: same CITY AND ZIP CODE: Santa Ana, CA 92702 BRANCH NAME: Central Justice Center		CASE NUMBER: 00665964 JUDGE KIRK H. NAKAMURA DEPT:	
CASE NAME:			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	--	---

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve c. <input type="checkbox"/> Substantial amount of documentary evidence	d. <input type="checkbox"/> Large number of witnesses e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court f. <input type="checkbox"/> Substantial postjudgment judicial supervision
--	--

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary, declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): 4 - violations of the FDCPA, Rosenthal FDCPA, FCRA, and CCRRA

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 01, 2013

Ruben T. Varela

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

1 Ruben T. Varela
2 c/o 2249 Camino Del Sol
3 Fullerton, California 92833
4 Plaintiff in Pro Per

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
AUG 01 2013
ALAN CARLSON Clerk of the Court

5
6  **COPY**

7
8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**
9 **UNLIMITED CIVIL CASE** **30-2013**

10
11 **00665964**

12 Ruben T. Varela,
13 Plaintiff,

14 vs.

15 CAVALRY PORTFOLIO SERVICES,
16 a Delaware Limited
17 Liability Corporation,
18 Defendant.

CASE NO. **JUDGE KIRK H. NAKAMURA**

VERIFIED COMPLAINT FOR DAMAGES:

1. VIOLATIONS OF THE FAIR DEBT COLLECTIONS PRACTICES ACT, 15 U.S.C. § 1692 ET SEQ.;
2. VIOLATIONS OF CALIFORNIA'S ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT, CAL. CIV. CODE § 1788 ET SEQ.;
3. VIOLATIONS OF THE FAIR CREDIT REPORTING ACT, 15 U.S.C. § 1681 ET SEQ.;
4. VIOLATIONS OF CALIFORNIA'S CONSUMER CREDIT REPORTING AGENGICES ACT, CAL. CIV. CODE § 1785 ET SEQ.

JURY TRIAL DEMANDED.

19
20
21
22
23
24
25
26
27
28
29
30
///

VERIFIED COMPLAINT

COMES NOW the Plaintiff, Ruben T. Varela (hereinafter "Plaintiff", "his", or "he"), and for his Complaint against defendant CAVALRY PORTFOLIO SERVICES, LLC, a Delaware limited liability corporation (hereinafter "Defendant"), hereby alleges:

PRELIMINARY STATEMENT

1. This is an action for damages brought for willful violations of the Fair Debt Collection Practices Act ("FDCPA") 15 U.S.C § 1692 *et seq.*; California's Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), California Civil Code ("Cal. Civ. Code") § 1788 *et seq.*; the Fair Credit Reporting Act ("FCRA") 15 U.S.C. § 1681 *et seq.*; and California's Consumer Credit Reporting Agencies Act, Cal. Civ. Code § 1785 *et seq.*

PARTIES

2. At all times mentioned herein, Plaintiff was and remains: a native born Californian domiciled in the city of Fullerton, county of Orange, state of California; a "consumer" as defined by the FDCPA, 15 U.S.C. § 1692a(3), the FCRA, 15 U.S.C. § 1681a(c), and the CCRAA, Cal. Civ. Code § 1785.3(b), respectively; and a "debtor" as defined by the RFDCPA, Cal. Civ. Code § 1788.2(h).

3. At all times mentioned herein, Defendant was and remains: a limited liability corporation organized

1 under the laws of the state of Delaware, with a
2 corporate address of 500 Summit Lake Drive, Suite 4A,
3 Valhalla, New York state, 10595, and doing business in
4 the county of Orange, state of California; a "person"
5 as that term is defined under the FCRA, 15 U.S.C. §
6 1681a(b), the RFDCPA, Cal. Civ. Code § 1788.2(g), and
7 the CCRAA, Cal. Civ. Code § 1785.3(j), respectively; a
8 "furnisher of information" as that term is contemplated
9 under the FCRA; a "debt collector" as defined by the
10 FDCPA, 15 U.S.C. § 1692a(6), and the RFDCPA, Cal. Civ.
11 Code § 1788.2(c), respectively; and a "creditor" as
12 defined by the CCRAA, Cal. Civ. Code § 1785.26(a)(1).
13
14

15 **FACTUAL ALLEGATIONS**

16 4. Defendant initiated collection of a debt
17 alleged to be owed by Plaintiff to Defendant (the
18 "alleged debt"), by obtaining a copy of Plaintiff's
19 consumer report from consumer reporting agency TRANS
20 UNION, LLC ("Trans Union") during the month of
21 February, 2012.
22

23 5. Plaintiff has no contractual agreement for
24 credit, loans or services relationship with Defendant.
25 Even if Plaintiff did have such an agreement, which
26 Plaintiff denies, the alleged debt is not at issue
27 here, but rather the facts as to how Defendant
28 willfully violated both federal and state law in
29 attempting to collect the alleged debt.
30

1 6. Upon information and belief and on that basis
2 Plaintiff alleges that during April, 2012, Defendant
3 began reporting or updating negative credit information
4 regarding the alleged debt to the major consumer
5 reporting agencies, EXPERIAN INFORMATION SOLUTIONS,
6 INC. (hereinafter "Experian"), EQUIFAX INFORMATION
7 SERVICES, LLC (hereinafter "Equifax"), and Trans Union
8 (collectively hereinafter the "CRA").
9

10 7. Defendant failed to notify Plaintiff in writing
11 prior to or within 30 days after submitting negative
12 credit information concerning Plaintiff to the CRA, and
13 each of them, in violation of the CCRAA, Cal Civ. Code
14 §§ 1785.26(b) and (c), as a separate and distinct
15 violation for each month from May, 2012, to August,
16 2012 with respect to Trans Union, and as separate and
17 distinct violations for each month from May, 2012, to
18 June, 2013, with respect to Equifax and Experian, and
19 each of them. The CCRAA, Cal Civ. Code §§ 1785.26(b)
20 and (c) read in relevant part:
21

22 *"(b) A creditor may submit negative credit*
23 *information concerning a consumer to a consumer*
24 *credit reporting agency, only if the creditor*
25 *notifies the consumer affected...*

26 *(c) The notice shall be in writing and shall be*
27 *delivered in person or mailed first class...to the*
28 *party's last know address, prior to or within 30*
29 *days after the transmission of the negative credit*
30 *information."*

(Emphasis added.)

1 8. Defendant failed to provide Plaintiff with
 2 mandatory written debt verification notice, pursuant to
 3 the FDCPA, 15 U.S.C. § 1692g(a), within five days after
 4 Defendant's initial "indirect" communication with
 5 Plaintiff, in connection with the collection of the
 6 alleged debt, or within five days after Defendant
 7 initially reported negative credit information
 8 concerning Plaintiff to any CRA¹. The FDCPA, 15 U.S.C.
 9 § 1692g(a) reads in relevant part:
 10

11 "(a) Within five days after the initial
 12 communication with a consumer in connection with the
 13 collection of any debt, a debt collector shall, unless
 14 the following information is contained in the initial
 15 communication or the consumer has paid the debt, send
 16 the consumer a written notice containing—

- 17 (1) the amount of the debt;
- 18 (2) the name of the creditor to whom the debt is
 19 owed;
- 20 (3) a statement that unless the consumer, within
 21 thirty days after receipt of the notice,
 22 disputes the validity of the debt, or any
 23 portion thereof, the debt will be assumed to be
 24 valid by the debt collector;
- 25 (4) a statement that if the consumer notifies the
 26 debt collector in writing within the thirty-day
 27 period that the debt, or any portion thereof,

28 ¹ See 15 U.S.C. § 1692a(2); See Blank v. Ford Motor Credit, 2005
 29 WL 43981, at *3 (N.D. Tex., Jan. 7, 2005) - "...reporting a debt
 30 to a credit reporting agency can be seen as a communication in
 connection with the collection of a debt...", quoting Sullivan
 v. Equifax, Inc., 2002 WL 799856, at *4 (E.D. Penn. April 19,
 2002) - "...'communication' is given a broad meaning under the
 FDCPA..."; See Cass, FTC Informal Staff Letter (Dec. 23, 1997) -
 "...the reality is that debt collectors use the reporting
 mechanism as a tool to persuade consumers to pay, just like
 dunning letters and telephone calls."

1 is disputed, the debt collector will obtain
2 verification of the debt or a copy of a
3 judgment against the consumer and a copy of
4 such verification or judgment will be mailed to
the consumer by the debt collector; and

- 5 (5) a statement that, upon the consumer's written
6 request within the thirty-day period, the debt
7 collector will provide the consumer with the
8 name and address of the original creditor, if
different from the current creditor.

9 9. Upon information and belief and on that basis
10 Plaintiff alleges that Defendant's failure in May,
11 2012, to provide Plaintiff with lawful debt
12 verification notice constituted a failure to validate
13 the alleged debt, which thereafter rendered the
14 "current status", "legal status" or "character" of the
15 un-validated, alleged debt as a legally "nonexistent"
16 debt (hereinafter the "alleged debt" or "nonexistent
17 debt"), for which Defendant was not entitled to
18 collect, or attempt to collect, until such time that
19 Defendant sent lawful debt validation, including lawful
20 written debt verification notice, to Plaintiff by mail.

21 10. Upon information and belief and on that basis
22 Plaintiff alleges that during May, 2012, Defendant
23 furnished or updated to Equifax and Experian, and each
24 of them, what Defendant knew, or should have known, to
25 be inaccurate credit information which misrepresented
26 the "current status", "legal status" or "character" of
27 a legally nonexistent debt, in violation of the CCRAA,
28 Cal. Civ. Code § 1785.25(a), as separate and distinct
29
30

1 violations for each month from May, 2012 to August,
2 2012, with respect to Trans Union, and as separate and
3 distinct violations for each month from May, 2012, to
4 June, 2013, with respect to Equifax and Experian, and
5 each of them.
6

7 11. Upon information and belief and on that basis
8 Plaintiff alleges that during May, 2012, Defendant
9 furnished or updated to the CRA, and each of them, what
10 Defendant knew, or should have known to be inaccurate
11 or incomplete credit information, by providing the
12 false statement in the "Remark" or "Comment" section
13 that the account information was "disputed by the
14 consumer", which misrepresented that numerous other
15 communications had previously occurred between
16 Defendant and Plaintiff, such as that:
17

18 (a) Defendant had previously communicated directly
19 with Plaintiff to demand payment; or that

20 (b) Plaintiff had previously disputed the alleged
21 debt through any CRA, and a subsequent
22 reinvestigation found the credit information to
23 be both accurate and complete; or that

24 (c) Plaintiff had previously disputed the alleged
25 debt directly with Defendant, and thereafter
26 Defendant provided Plaintiff with lawful debt
27 validation, including lawful debt verification
28 notice.

29 Therefore Defendant violated the CCRAA, Cal. Civ.
30 Code § 1785.25(a), as separate and distinct violations

1 for each month from May, 2012, to August, 2012, with
2 respect to each CRA.

3 12. Plaintiff formally disputed the alleged debt
4 through Trans Union in a letter dated July 26, 2012,
5 sent via certified mail with return receipt.
6

7 13. Upon information and belief and on that basis
8 Plaintiff alleges that Trans Union notified Defendant
9 of Plaintiff's formal dispute, in accordance with the
10 FCRA, 15 U.S.C. § 1681i(a)(2).

11 14. Upon notification of Plaintiff's formal
12 dispute from Trans Union, Defendant had an affirmative
13 duty to, *inter alia*, conduct an independent
14 investigation into Plaintiff's dispute, pursuant to 15
15 U.S.C. § 1681s-2(b)(1), which reads in relevant part:
16

- 17 "(1) *In general*. After receiving notice pursuant
18 to section 611(a)(2) [§ 1681i] of a dispute
19 with regard to the completeness or accuracy of
20 any information provided by a person to a
21 consumer reporting agency, the person shall
22 (A) conduct an investigation with respect to
23 the disputed information;
24 (B) review all relevant information provided
25 by the consumer reporting agency pursuant
26 to section 611(a)(2) [§ 1681i];
27 (C) report the results of the investigation to
28 the consumer reporting agency;
29 (D) if the investigation finds that the
30 information is incomplete or inaccurate,
report those results to all other consumer
reporting agencies to which the person
furnished the information and that compile
and maintain files on consumers on a
national basis; and

- 1 (E) if an item of information disputed by a
2 consumer is found to be inaccurate or
3 incomplete or cannot be verified after any
4 reinvestigation under paragraph (1), for
5 purposes of reporting to a consumer
6 reporting agency only, as appropriate,
7 based on the results of the
8 reinvestigation promptly-
9 (i) modify that item of information;
10 (ii) delete that item of information; or
11 (iii) permanently block the reporting of
12 that item of information."

13 15. On or about August 28, 2012, Plaintiff
14 received a report from Trans Union notifying Plaintiff
15 that the disputed alleged debt "item" had been deleted
16 from his Trans Union consumer report. The notice from
17 Trans Union did not indicate whether the deletion was
18 initiated by Trans Union, or by Defendant.

19 16. Upon information and belief, and on that basis
20 Plaintiff alleges that during August, 2012, Defendant
21 failed to report to all other consumer reporting
22 agencies, including but not limited to Equifax and
23 Experian, and each of them, that disputed credit
24 information furnished by Defendant inaccurately
25 represented the "current status", "legal status" or
26 "character" of a legally nonexistent debt, thereby
27 violating the FCRA, 15 U.S.C. § 1681s-2(b)(1)(D), as
28 separate and distinct violations for each month from
29 August, 2012 to June, 2013.

30 17. Upon information and belief, and on that basis
Plaintiff alleges that during August, 2012, Defendant

1 failed to promptly instruct both Equifax and Experian,
2 and each of them, to delete inaccurate credit
3 information furnished by Defendant which misrepresented
4 the "current status", "legal status", or "character" of
5 a legally nonexistent debt, thereby violating the FCRA,
6 15 U.S.C. § 1681s-2(b)(1)(E)(ii), as separate and
7 distinct violations for each month from August, 2012,
8 to June, 2013.

10 18. Upon information and belief and on that basis
11 Plaintiff alleges that within the twelve month period
12 preceding the filing of this action, Defendant engaged
13 in continuous adverse collection activities, in
14 connection with the collection of a legally nonexistent
15 debt, thereby violating the FDCPA, 15 U.S.C. §§ 1692e,
16 1692e(2)(A), 1692e(8), 1692e(10), 1692f, and 1692g(b).

18 19. During the month of October, 2012, Defendant
19 obtained a second copy of Plaintiff's Trans Union
20 consumer report, in connection with the collection of a
21 legally nonexistent debt, and thus without a
22 permissible purpose, in violation of the FCRA, 15
23 U.S.C. §§ 1681b(f).

25 20. During the month of February, 2013, Plaintiff
26 reviewed his consumer reports and discovered that
27 Defendant was still furnishing and updating to Equifax
28 and Experian, and each of them, inaccurate or
29 incomplete credit information which misrepresented the
30

1 "current status", "legal status, or "character" of a
2 legally nonexistent debt.

3 21. On or about February 19, 2013, Plaintiff sent
4 to Experian and Equifax, and each of them, a letter
5 formally disputing the alleged debt, via certified mail
6 with return receipt. Plaintiff's letter to Experian
7 and Equifax, and each of them, specified, *inter alia*,
8 that Plaintiff had no contractual relationship with
9 Defendant, and that the alleged debt was "unverified".
10

11 22. Upon information and belief and on that basis
12 Plaintiff alleges that Equifax and Experian, and each
13 of them, notified Defendant of Plaintiff's formal
14 dispute, in accordance with the FCRA, 15 U.S.C. §
15 1681i(a)(2).
16

17 23. On or about March 7, 2013, Plaintiff sent
18 Defendant a letter disputing the alleged debt (the
19 "dispute letter"), via certified mail with return
20 receipt, advising Defendant, *inter alia*, that Defendant
21 had been engaged in continuous adverse collection
22 activities for over a one year period, without
23 validating the alleged debt or providing Plaintiff with
24 lawful debt verification notice. Plaintiff's dispute
25 letter also demanded debt validation from Defendant.
26

27 24. U.S. postal records indicate that Defendant
28 received Plaintiff's letter on March 11, 2013.

29 25. On or about March 19, 2013, Plaintiff received
30 a report from Equifax dated March 14, 2013, notifying

1 Plaintiff that the disputed "item" would remain on
2 Plaintiff's Equifax consumer report, as reported by
3 Defendant.

4 26. On or about April 4, 2013, Plaintiff received
5 a report from Experian dated April 1, 2013, notifying
6 Plaintiff that the disputed "item" would remain on
7 Plaintiff's Experian consumer report, as reported by
8 Defendant.

9 27. During March, 2013, Defendant failed to
10 conduct an independent investigation into Plaintiff's
11 formal dispute, upon notification thereof by Equifax
12 and Experian, and each of them, regarding what
13 Defendant knew to be a legally nonexistent debt,
14 thereby violating the FCRA, 15 U.S.C. § 1681s-
15 2(b)(1)(A).

16 28. During March, 2013, Defendant failed to review
17 all relevant information provided to Defendant by
18 Equifax and Experian, and each of them, pursuant to §
19 1681i, thereby violating the FCRA, 15 U.S.C. § 1681s-
20 2(b)(1)(B).

21 29. Beginning in March, 2013, Defendant failed to
22 report to Equifax and Experian, and each of them, that
23 disputed credit information furnished by Defendant
24 inaccurately represented the "current status" "legal
25 status" or "character" of a legally nonexistent debt,
26 thereby violating the FCRA, 15 U.S.C. § 1681s-
27
28
29
30

1 2(b)(1)(C), as separate and distinct violations for
2 each month from March, 2013 to June, 2013.

3 30. On or about April 9, 2013, Plaintiff received
4 a letter from Defendant dated April 2, 2013, attempting
5 to collect the alleged debt (the "collection letter").
6

7 31. Defendant's collection letter failed to
8 provide complete debt verification notice as mandated
9 by the FDCPA, 15 U.S.C. §§ 1692g(a)(1)-(5), by omitting
10 those specific notices required under subsections
11 1692g(a)(3)-(5).

12 32. Defendant's collection letter also failed to
13 validate the alleged debt by failing to appropriately
14 respond to Plaintiff's dispute letter demanding that
15 Defendant, a third party debt collector, provide
16 Plaintiff with competent evidence demonstrating that
17 Defendant was entitled, by assignment or agency, to
18 collect, or attempt to collect, any alleged debt from
19 Plaintiff.
20

21 33. As of the date hereof, Defendant has failed to
22 provide Plaintiff with lawful debt verification notice,
23 and failed to lawfully validate the alleged debt, which
24 remains a legally nonexistent debt.
25

26 34. Plaintiff alleges that Defendant's conduct, as
27 described herein, constituted knowing and willful
28 violations of the FDCPA, RFDCPA, FCRA, and CCRA, as
29 well as malice, oppression and fraud within the meaning
30 of Cal. Civ. Code § 3294, with the intent to cause

1 injury to Plaintiff, or otherwise that Defendant acted,
2 or failed to act, with "reckless disregard"² as to
3 Plaintiff's consumer rights and the high probability of
4 injury to Plaintiff as a result - thereby justifying
5 the award of exemplary punitive damages, as a deterrent
6 to Defendant's future commission of such unlawful
7 conduct, as described herein.
8

9 35. As a proximate result of Defendant's unlawful
10 actions and omissions, as described herein, Plaintiff
11 has suffered actual damages including but not limited
12 to a lower credit rating, denial of credit, loss of
13 opportunities to engage in commerce, loss of reputation
14 and standing in the community, and Plaintiff has
15 suffered, and continues to suffer injury to Plaintiff's
16 feelings, anxiety, frustration, embarrassment, mental
17 anguish, and emotional distress.
18

19 36. On or about May 20, 2013, Plaintiff sent
20 Defendant a Notice & Demand letter, via certified mail,
21 alleging violations of law by Defendant, and demanding
22 compensatory monetary damages therefore, as a good
23 faith effort to amicably resolve the foregoing matters
24 without resorting to a civil lawsuit.
25
26
27

28 ² See Safeco Insurance Co. v. Burr, 127 S. Ct. 2201 (2007) -
29 "Where willfulness is a statutory condition of civil liability,
30 it is generally taken to cover not only knowing violations of a
standard, but reckless ones as well... The standard civil usage
thus counsels reading §1681n(a)'s phrase 'willfully fails to
comply' as reaching reckless FCRA violations..."

37. Although Defendant has advised Plaintiff in a letter dated June 20, 2013, that Defendant will be closing its collection account for the legally nonexistent debt, Defendant has ignored Plaintiff's settlement demands and multiple efforts to engage in settlement discussions, thus leaving Plaintiff with no alternative but to petition this honorable Court for redress of grievances.

CAUSE OF ACTION I
WILLFUL VIOLATIONS BY DEFENDANT OF THE FDCPA,
15 U.S.C. § 1692 ET SEQ.

38. Plaintiff restates and reiterates herein all previous paragraphs.

39. Defendant willfully violated the FDCPA. Defendant's violations include, but are not limited to the following:

(a) Defendant willfully violated 15 U.S.C. § 1692c(b), by unlawfully communicating with third parties, in connection with the collection of a nonexistent.

(b) Defendant willfully violated 15 U.S.C. § 1692e, by the use of false, deceptive, or misleading representation or means in connection with the collection of any debt.

(c) Defendant willfully violated 15 U.S.C. § 1692e(2)(A), by falsely representing the character, amount, or legal status of any debt.

1 (d) Defendant willfully violated 15 U.S.C. §
2 1692e(8), by communicating to any person credit
3 information which is known or which should be known to
4 be false.

5 (e) Defendant willfully violated 15 U.S.C §
6 1692e(10), by the use of false representation or
7 deceptive means to collect or attempt to collect any
8 debt or to obtain information concerning a consumer.

9 (f) Defendant willfully violated 15 U.S.C § 1692f,
10 by the use of unfair or unconscionable means to collect
11 or attempt to collect any debt.

12 (g) Defendant willfully violated 15 U.S.C §
13 1692g(b), by failing to cease collection of an alleged
14 debt, until verification of the debt or any copy of a
15 judgment was obtained by Defendant and sent to
16 Plaintiff by mail.

17
18
19
20 **CAUSE OF ACTION II**
21 **WILLFUL VIOLATIONS BY DEFENDANT OF THE RFDCPA,**
22 **CAL. CIV. CODE § 1788 ET SEQ.**

23 40. Plaintiff restates and reiterates herein all
24 previous paragraphs.

25 41. Defendant willfully violated the RFDCPA.
26 Defendant's violations include, but are not limited to
27 the following:

28 (a) Defendant willfully violated Cal. Civ. Code §
29 1788.17, by violating those provisions of the FDCPA, 15
30 U.S.C. § 1692c(b).

1 (b) Defendant willfully violated Cal. Civ. Code §
2 1788.17, by violating the FDCPA, 15 U.S.C. § 1692e.

3 (c) Defendant willfully violated Cal. Civ. Code §
4 1788.17, by violating the FDCPA, 15 U.S.C. §
5 1692e(2)(A).

6 (d) Defendant willfully violated Cal. Civ. Code §
7 1788.17, by violating the FDCPA, 15 U.S.C. § 1692e(8).

8 (e) Defendant willfully violated Cal. Civ. Code §
9 1788.17, by violating the FDCPA, 15 U.S.C. § 1692e(10).

10 (f) Defendant willfully violated Cal. Civ. Code §
11 1788.17, by violating the FDCPA, 15 U.S.C. § 1692f.

12 (g) Defendant willfully violated Cal. Civ. Code §
13 1788.17, by violating the FDCPA, 15 U.S.C. § 1692g(b).

14
15
16 **CAUSE OF ACTION III**
17 **WILLFUL VIOLATIONS BY DEFENDANT OF THE FCRA,**
18 **15 U.S.C. § 1681 ET SEQ.**

19 42. Plaintiff restates and reiterates herein all
20 previous paragraphs.

21 43. Defendant willfully violated the FCRA.
22 Defendant's violations include, but are not limited to
23 the following:

24 (a) Defendant willfully violated the FCRA, 15
25 U.S.C. § 1681b(f), by obtaining Plaintiff's Trans Union
26 consumer report without a permissible purpose, in
27 connection with the collection of a nonexistent debt.

28 (b) Defendant willfully violated the FCRA, 15
29 U.S.C. § 1681s-2(b)(1)(D), by failing to report to
30

1 Equifax that negative credit information furnished by
2 Defendant inaccurately represented the "current
3 status", "legal status" and/or "character" of a legally
4 nonexistent debt, for each month from August, 2012, to
5 June, 2013.
6

7 (c) Defendant willfully violated the FCRA, 15
8 U.S.C. § 1681s-2(b)(1)(D), by failing to report to
9 Experian that credit information as furnished by
10 Defendant inaccurately represented the "legal status"
11 and/or "character" of a legally nonexistent debt, for
12 each month from August, 2012, to June, 2013.
13

14 (d) Defendant willfully violated the FCRA, 15
15 U.S.C. § 1681s-2(b)(1)(E)(ii), by failing to promptly
16 instruct Equifax to delete inaccurate credit
17 information as furnished by Defendant, for each month
18 from August, 2012, to June, 2013.
19

20 (e) Defendant willfully violated the FCRA, 15
21 U.S.C. § 1681s-2(b)(1)(E)(ii), by failing to promptly
22 instruct Experian to delete inaccurate credit
23 information as furnished by Defendant, for each month
24 from August, 2012, to June, 2013.
25

26 (f) Defendant willfully violated the FCRA, 15
27 U.S.C. § 1681s-2(b)(1)(A), by failing, in approximately
28 February, 2013, to conduct an independent investigation
29 with respect to credit information disputed by
30 Plaintiff through Equifax.

1 (g) Defendant willfully violated the FCRA, 15
2 U.S.C. § 1681s-2(b)(1)(A), by failing, in approximately
3 February, 2013, to conduct an investigation with
4 respect to credit information disputed by Plaintiff
5 through Experian.
6

7 (h) Defendant willfully violated the FCRA, 15
8 U.S.C. § 1681s-2(b)(1)(B), by failing, in approximately
9 February, 2013, to review all relevant information
10 provided by Equifax pursuant to 15 U.S.C. § 1681i.

11 (i) Defendant willfully violated the FCRA, 15
12 U.S.C. § 1681s-2(b)(1)(B), by failing, in approximately
13 February, 2013, to review all relevant information
14 provided by Experian pursuant to 15 U.S.C. § 1681i.
15

16 (j) Defendant willfully violated the FCRA, 15
17 U.S.C. § 1681s-2(b)(1)(C), by failing to report the
18 results of an investigation to Equifax, for each month
19 from March, 2013, to June, 2013.

20 (k) Defendant willfully violated the FCRA, 15
21 U.S.C. § 1681s-2(b)(1)(C), by failing to report the
22 results of an investigation to Experian, for each month
23 from March, 2013, to June, 2013.
24

25 **CAUSE OF ACTION IV**
26 **WILLFUL VIOLATIONS BY DEFENDANT OF THE CCRAA,**
27 **CAL. CIV. CODE § 1785 ET SEQ.**

28 44. Plaintiff restates and reiterates herein all
29 previous paragraphs.
30

1 45. Defendant willfully violated the CCRAA.
2 Defendant's violations include, but are not limited to
3 the following:

4 (a) Defendant willfully violated the CCRAA, Cal.
5 Civ. Code § 1785.26(b), by submitting negative credit
6 information concerning Plaintiff to consumer reporting
7 agency Trans Union, without notifying Plaintiff, for
8 each month from May, 2012, to August, 2012.

9
10 (b) Defendant willfully violated the CCRAA, Cal.
11 Civ. Code § 1785.26(b), by submitting negative credit
12 information concerning Plaintiff to consumer reporting
13 agency Equifax, without notifying Plaintiff, for each
14 month from May, 2012, to June, 2013.

15
16 (c) Defendant willfully violated the CCRAA, Cal.
17 Civ. Code § 1785.26(b), by submitting negative credit
18 information concerning Plaintiff to consumer reporting
19 agency Experian, without notifying Plaintiff, for each
20 month from May, 2012, to June, 2013.

21 (d) Defendant willfully violated the CCRAA, Cal.
22 Civ. Code § 1785.26(c), by failing to notify Plaintiff
23 in writing prior to or within 30 days after submitting
24 negative credit information concerning Plaintiff to
25 consumer reporting agency Trans Union, for each month
26 from May, 2012, to August, 2012.

27
28 (e) Defendant willfully violated the CCRAA, Cal.
29 Civ. Code § 1785.26(c), by failing to notify Plaintiff
30 in writing prior to or within 30 days after submitting

1 negative credit information concerning Plaintiff to
2 consumer reporting agency Equifax, for each month from
3 May, 2012, to June, 2013.

4 (f) Defendant willfully violated the CCRAA, Cal.
5 Civ. Code § 1785.26(c), by failing to notify Plaintiff
6 in writing prior to or within 30 days after submitting
7 negative credit information concerning Plaintiff to
8 consumer reporting agency Experian, for each month from
9 May, 2012, to June, 2013.

10 (g) Defendant willfully violated the CCRAA, Cal.
11 Civ. Code § 1785.25(a), by furnishing credit
12 information to Trans Union regarding a specific
13 transaction or experience, which Defendant knew, or
14 should have known, was incomplete or inaccurate, for
15 each month from May, 2012, to August, 2012.

16 (h) Defendant willfully violated the CCRAA, Cal.
17 Civ. Code § 1785.25(a), by furnishing information to
18 Equifax regarding a specific transaction or experience,
19 which Defendant knew, or should have known, was
20 incomplete or inaccurate, for each month from May,
21 2012, to June, 2013.

22 (i) Defendant willfully violated the CCRAA, Cal.
23 Civ. Code § 1785.25(a), by furnishing information to
24 Experian regarding a specific transaction or
25 experience, which Defendant knew, or should have known,
26 was incomplete or inaccurate, for each month from May,
27 2012, to June, 2013.

REQUEST FOR RELIEF

46. WHEREFORE Defendant has willfully violated the FDCPA, RFDCPA, FCRA, and CCRAA, Plaintiff hereby requests:

(a) Judgment for damages against Defendant for the greater of statutory damages in the amount of \$1,000.00 or actual damages, attorneys fees, and costs, pursuant to 15 U.S.C. § 1692k;

(b) Judgment for damages against Defendant for the greater of statutory damages in the amount of \$1,000.00 or actual damages, attorneys fees, and costs, pursuant to Cal. Civ. Code §§ 1788.17 and 1788.30(b);

(c) Judgment for damages against Defendant for the greater of statutory damages in the amount of \$51,000.00 or actual damages, and punitive damages in the amount of \$250,000, as punishment and a deterrent to Defendant's future commission of such unlawful conduct, as described herein, attorneys fees, and costs, pursuant to 15 U.S.C. § 1681n;

(d) Judgment for damages against Defendant for actual damages, and punitive damages in the amount of \$345,000.00, as punishment and a deterrent to Defendant's future commission of such unlawful conduct, as described herein, attorneys fees, and costs, pursuant to Cal. Civ. Code §§ 1785.31(a), and (d);

(e) Any other relief that the court deems proper.

DEMAND FOR JURY TRIAL

47. Plaintiff hereby respectfully demands a jury trial on all the issues raised in this complaint.

Dated: August 01, 2013

By: 

Ruben T. Varela
Plaintiff in Pro Per

VERIFICATION

I am the plaintiff in this action. I have read the foregoing complaint and it is true of my own knowledge, except as to those matters stated on information or belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed on August 01, 2013 at the city of Fullerton, county of Orange, California:

By: 

Ruben T. Varela

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge DAVID O. CARTER and the assigned
Magistrate Judge is VICTOR B. KENTON.

The case number on all documents filed with the Court should read as follows:

SACV13-01357 DOC (VBKx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of
California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

August 30 2013

Date

By Dwayne Roberts

Deputy Clerk

NOTICE TO COUNSEL

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is
filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☐

Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012

☒

Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701

☐

Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.